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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SCOTT CHAPMAN, PETITIONER

v.

JOAB L. THOMAS AND THOMAS H. STAFFORD

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

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52pp

QUESTION PRESENTED

Whether it is proper to determine the constitutionality of state university officials' restrictions upon First Amendment rights of state university students merely with regard to a "reasonableness" standard instead of applying the "substantial disturbance" standard established by this Court in Tinker v. Des Moines School District?*

* All of the parties in the United States Court of Appeals for the Fourth Circuit are listed in the caption. As originally brought, in addition to the individual named respondents, the parties defendant included Joab L. Thomas as Chancellor of North Carolina State University; Thomas H. Stafford as Vice Chancellor of Student Affairs, North Carolina State University; the greater University of North Carolina; and North Carolina State University.

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No.

SCOTT CHAPMAN, PETITIONER

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JOAB L. THOMAS AND THOMAS H. STAFFORD

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on September 19, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 743 F.2d 1056. It is reproduced in Appendix A to this Petition. There was no formal opinion of the District Court; however, that Court's order accepting the recommendation of the magistrate in this action is reproduced in Appen-

dix B. The Magistrate's Memorandum and Recommendation is reproduced in Appendix C.

JURISDICTION

The judgment of the court below was entered on September 19, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides in pertinent part as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,... or the right of the people peaceably to assemble....

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of...liberty...without due process of law; nor deny to any person

> within its jurisdiction the equal protection of the laws.
>
> . . . .
>
> The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The Statute involved in this case is 42 U.S.C. §1983. It is set forth, in pertinent part, in Appendix D to this Petition.

STATEMENT OF THE CASE

Petitioner, Scott Chapman, was a full time student in good standing at North Carolina State University (NCSU) in Raleigh, North Carolina, at the time the events occurred which gave rise to this action. Mr. Chapman was also an active member of the Brooks Avenue Church of Christ, a fundamentalist, evangelical Christian church, which encouraged each church member to spread the Gospel by personally proselytizing in his community

During the first and second sessions of summer school at NCSU during the summer of 1980, Chapman, in accordance with the tenets

of his faith, canvassed door to door in some of the NCSU campus dormitories in order to invite fellow students to attend a series of discussions of scripture. Chapman would enter the dormitory hallways and knock upon dormitory room doors in order to initiate contact with other students and extend invitations. If, after he introduced himself and stated his purpose for speaking to other students, the other students showed no interest in the meetings, Chapman would excuse himself and proceed to further contacts. If a fellow student showed interest in the discussions, then Chapman would tell that student the time and place of the next discussion

As a result of this solicitation, NCSU officials threatened Chapman with expulsion from school because Chapman's activities were considered by school officials to be in violation of the NCSU Noncommercial Solicitation Policy then in effect. See Appendix E (App. 24a) This policy was interpreted as preventing, and enforced to prevent,

Chapman or any NCSU student from personally approaching another student on a one-to-one basis either in the dormitory hallways or in the student's room to invite that student to a discussion of Scripture, except that candidates for Student Government offices were explicitly exempted from the policy's stated prohibitions against noncommercial solicitation. (This exemption for student politicians was removed from the policy in December, 1980.) In addition to being threatened with expulsion, Chapman was charged through the NCSU judicial system with violating the school's solicitation policy, and he was tried before a student tribunal. Because none of the student witnesses for the prosecution identified Chapman as a dormitory solicitor, he was acquitted.

Although Chapman still desired to engage in the type of door-to-door solicitation described above, the Solicitation Policy continued to threaten him, should he not discontinue his canvassing, with severe academic sanctions. He

was thus deterred from fulfilling the mandate of his faith.

Chapman initiated this action under 42 U.S.C. §1983 in November, 1980, as a class action for damages and permanent injunctive relief against the University of North Carolina and North Carolina State University, and against the Chancellor of NCSU, Joab Thomas, and Vice Chancellor of NCSU, Thomas Stafford, in both their official and individual capacities. He alleged the NCSU Solicitation Policy was, as applied to him and those in the class he sought to represent, unconstitutional in that it chilled the exercise of rights guaranteed by the First and Fourth Amendments. The damage claim against the greater University of North Carolina, NCSU, and its officers in their official capacities was dismissed by an interlocutory order which was not appealed. The claim for permanent injunctive relief against the broad solicitation ban effective after December, 1980, was dismissed by an interlocutory

order of the District Court dated June 14, 1982. However, because the District Court found that the record before it did not conclusively reflect the University's practices in regard to its prior policy of limited solicitation in effect between June and December, 1980, Defendant's motion for summary judgment was denied as to the constitutionality of the earlier limited solicitation ban. Subsequently, Chapman appealed the grant of summary judgment for Defendants on the issue of permanent injunctive relief. The Court of Appeals affirmed this judgment of the District Court in an unpublished opinion. Chapman v. Thomas, et al., no. 82-1634 (4th Cir. June 22, 1983).

In November, 1983, on Defendant's motion, the District Court granted summary judgment for Defendants on the remaining aspect of Petitioner's claim -- whether NCSU'S selective noncommericial solicitation policy, effective between June and December of 1980, was constitutional -- and Petitioner appealed pressing the claim for declaratory

and monetary relief. The Court of Appeals in a published decision affirmed the District Court. Chapman v. Thomas, et al., no. 83-2191 (4th Cir. September 19, 1984). This affirmance underlies the instant petition.

REASONS FOR GRANTING THE WRIT

I. The decision below is in conflict with applicable decisions of this Court regarding students' exercise of First Amendment rights.

The court below found that it was appropriate to test the constitutionality of North Carolina State University's selective prohibition of non-commercial door-to-door solicitation, which was in force between June and December of 1980, (see Appendix E, App. 24a), against a reasonableness standard. (App. 9a) This determination rested, first, upon the finding that the public property at issue, campus residence halls, has neither by tradition nor designation been constituted a public forum for communicative purposes, so that it

must be deemed a nonpublic forum. (App. 8a-9a) The court then applied the principles recently set forth by this Court in Perry Educational Association v. Perry Local Educators' Association, ___U.S. ___, 103 S.Ct. 948 (1983), relevant to the evaluation of limitations upon the exercise of First Amendment rights on public property. Finding there that speaker access to nonpublic forums may be regulated on the basis of speaker identity and subject matter to limit the forum's activities to those compatible with its intended purposes so long as the regulation of speech is reasonable, id. at 955, 957, the court undertook such an analysis and upheld the regulation. (App.8a-12a)

Petitioner maintains that the holding below is in conflict with the decisions of this Court which are directly applicable to the issue at bar. The question here is whether respondents properly deterred Petitioner Chapman, himself a dormitory resident at NCSU, from inviting fellow dormitory residents to discussions of Scripture by going

door-to-door through the hallways, while, at the same time, excepting some student politicians engaged in campaigning from such a prohibition. Even if the university residence hall forum here in issue is properly construed or characterized as a forum that is not by tradition public, dormitory hall resident Chapman, a student, was legitimately in it. There is simply no issue as to his rightful access to the dormitory or status as a speaker within it. Nor is there any question as to whether Chapman's intended expressive activity is protected. Noncommercial door-to-door solicitation for the purpose of disseminating religious ideas is a type of activity that has long been held to warrant First Amendment protection. See Murdoch v. Pennsylvania, 319 U.S. 105, 110 (1943). Indeed, it is an esteemed and significant adjunct to the tradition of free expression. Martin v. Struthers, 319 U.S. 141, 145-47 (1943). Thus resolution of the instant case turns upon a consideration of what the scope of Chapman's First

Amendment rights at his school is. Specifically, is it ever permissible for respondents to limit Chapman's right to engage in door-to-door religious discourse in his dormitory while allowing other students to engage in door-to-door political discourse, and, if it is, under what circumstances?

Petitioner submits that Tinker v. Des Moines School District, 393 U.S. 503 (1969), is directly applicable to this determination. Petitioners there argued that it was violative of free speech rights to suspend students from school for engaging in expressive activities articulating a particular opinion -- wearing black arm bands to show opposition to the Vietnam war. Id. at 504. The District Court held the action constitutional in that it was reasonably taken to prevent disorder in the school. Id. at 504-05. On appeal, the Eighth Circuit en banc split evenly, and thus the District Court was affirmed without opinion. Id. This Court, in reversing, held that students' rights to freely express some particular opinion could not be

abrogated by school officials absent a showing that expression of that view would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. Id. at 509. In Grayned v. City of Rockford, 408 U.S. 104 (1972), the court reiterated:

> Tinker made clear that school property may not be declared off limits for expressive activity by students . . . But expressive activity may be prohibited if it materially disrupts class work or involves substantial disorder or invasion of the rights of others. (citation omitted) 408 U.S. at 118 (emphasis added).

Clearly these holdings bear squarely upon the issue here: Chapman's particular expressive activity on his own campus was prohibited, and Tinker supplies a standard for assessing the propriety of this restriction -- a "substantial disruption" standard.[1]

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[1]Petitioner further notes that in James v. Nelson, 349 F. Supp. 1061 (N.D. Ill. 1972), the only other reported decision in the federal courts which he has found dealing with a solicitation prohibition in a university setting similar to that at issue here, the court, in granting a

Further, Petitioner asserts that Police Department of Chicago v. Mosely, 408 U.S. 92 (1972), directly applies to the determination of the case at bar. In Mosely, the city had allowed peaceful picketing in regard to a particular school's labot dispute, but prohibited all other picketing in the immediate vicinity of the school. This Court found there was a distinction between classes of speech which violated the Equal Protection Clause, and held that "[s]elective exclusions from a public forum may not be based on content alone." Id. at 96. It is, of course, possible that a state may have a legitimate interest in some selective exclusion of speech from an open forum, but all such exclusions must be strictly scrutinized and found to be drawn to serve a substantial governmental interest. Id. at 98-99. In the instant

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temporary restraining order preventing the university's enforcement of its band, rejected the contention that the ban was justified by considerations of discipline or student privacy, suggesting that that court found a more strict standard than reasonableness to be appropriate for the determination of the issue before it.

case, Grayned implies, NCSU is as to Chapman and the student politicians, in effect, an open forum, see 408 U.S. at 118; therefore, respondents' selective exclusion from the school forum of Chapman's religious speech must, under the authority of Mosely, be evaluated under an equal protection analysis. Thus the standard appropriate to deciding this case is the "substantial government interest" test and not the mere reasonableness test used below.

The decision below in its use of a reasonableness standard to resolve the issue at bar thus conflicts with the applicable decisions of this Court which require restrictions upon student speech be tested by, at least, a more stringent "substantial disturbance" standard.

II. This case presents issues of great public importance.

The decisions by the courts below in this case have now established the following as the law in the Fourth Circuit: Officials at state supported universities can prohibit in dormitory residences all

expressions of religious views by students or invitations by students to other students to attend religious services or functions. And university officials may place such a ban on the free exercise of religious expression while permitting student politicians to campaign door-to-door in student residence areas.

Under the regulation here at issue (App. 24a) university officials actually engaged in censorship of religious and political expression in dormitory halls and rooms. All such expression under the contested regulation was banned under pain of expulsion for a student who dared to engage in any form of religious "solicitation." In addition, the contested regulation banned any form of political expression in dorm hallways and dorm rooms except that by student politicians. Thus, a student could knock on a fellow student's door and request the student to vote for him to be student body president, but could not ask that student to vote for Ronald Reagan to be President of the United States.

Similarily, Scott Chapman could knock on a fellow student's door and invite or encourage the room occupant to go to the next basketball game to show support for the team (sports "solicitation" is not banned by the regulation in question), but he risked discipline up to and including expulsion for knocking on a door and inviting the room occupant to attend a religious service.

Manifestly, if it is not disruptive for students to knock on doors to engage in sports "solicitation," then it is not disruptive, for First Amendment purposes, for students to knock on doors to engage in religious "solicitation." For school officials to pick and choose through school regulations what forms of student solicitation are permitted is state government censorship in its most naked form. The state government tells its student dorm room occupants that one type political expression is all right, another is not. No type religious "solicitation" is permissible, although noncommercial solicitation of any other kind is

all right. It seems that state university officials feel that students at North Carolina State University -- most of whom are obviously over the age of 18 -- must be protected in the dormitory rooms and hallways from exposure to any religious ideas and any political ideas except those relating to student politics. The First Amendment, made applicable to the states through the due process clause of the Fourteenth Amendment, says otherwise.

A university by its very nature is supposed to be a place that encourages the free exchange of all kinds of ideas and viewpoints, including those in two of the areas most precious to a free society -- religion and politics. Cf. Healy v. James, 408 U.S. 169, 180 (1972) (college classroom with its surrounding environs peculiarly the marketplace of ideas); Keyishian v. Board of Regents, 385 U.S. 587, 603 (1967) ("The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas [on university campuses] which discovers truth 'out of a multitude of tongues.'"); Kim v.

Coppin State College, 662 F.2d 1055, 1063-64 (4th Cir. 1981) (schools, particularly universities, to serve as "great bazaars of ideas" where regulation has little place, so civilization will not stagnate). A dormitory room to a university student is truly and in every sense of the word his "home," his dwelling, while he is living on campus during the school semester. But the regulation here challenged censors the free exchange of ideas of a religious and political nature where the student lives or dwells.

It should be pointed out what is not at issue in this case. The question here presented does not deal with the right of state university administrators to forbid trespassing in dormitories by non-students. The issue is a very narrow one: May a state university selectively censor the non-commercial speech of a student dormitory occupant, such as Scott Chapman, in the hallways and rooms of a student dorm? The courts below, applying a "reasonableness" test, hold that such selective censorship is

permissible under the First Amendment. But the lower courts have gone off on a tangent to uphold the regulation here at issue. In the first place, as pointed out, supra, reliance on Perry Educational Association v. Perry Local Educators' Association, supra, is misplaced because a student such as Mr. Chapman already has access lawfully to student dorms, and so whether they are or are not "public forums" is clearly irrelevant to a proper analysis of this case. In the second place, because a student such as Mr. Chapman already has lawful access to the dorm hallways and may knock on the doors of fellow students for any noncommercial speech purpose other than religion and certain types of politics, censoring religious and most political expression is equivalent to the school administration in Perry permitting the recognized faculty union to use the intra-school mailboxes but censoring the content of the recognized union's printed matter. This Court in Perry did not and would not ever sanction such a result. In the

third place, the lower courts' analysis in this case has failed miserably because they totally ignored or overlooked the controlling law in this area, which is set forth in Tinker. The courts below have effectively said: a student may wear religious symbols or political buttons to class at North Carolina State University, even though the subject of the class may be math, as long as no disruption to learning is caused in the math classroom. But this same student may not approach a fellow university student in the hallway of his dormitory at 10 p.m. and invite that student to attend a religious service, or to vote for a certain candidate for public office; nor may he knock on the door of a fellow student for the purpose of seeking to engage in discussion of a religious or political nature.

Such a result is absurd in a country that revers freedom of speech and the free exercise of religion. It is especially absurd in the context of censoring such free political or religious

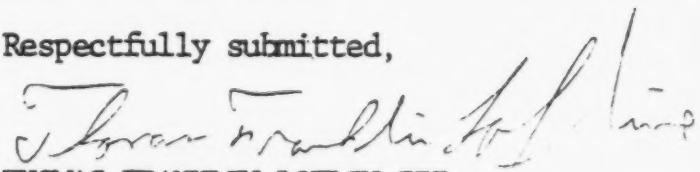
expression in dormitory rooms and hallways populated by adult university students who are at the university, presumably, for the purpose of engaging in unfettered and uninhibited participation in the free marketplace of ideas.

This Court should grant this Petition for Writ of Certiorari and correct this absurd and clearly unconstitutional result.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that this Court grant this Petition for Certiorari.

Respectfully submitted,



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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-2191

Scott Chapman,

Appellant,

versus

Joab L. Thomas, individually,
Thomas H. Stafford, individually,

Appellees.

and

Joab L. Thomas as Chancellor of North Carolina State University, Thomas H. Stafford, as Vice Chancellor of Student Affairs, North Carolina State University; the greater University of North Carolina ; and North Carolina State University,

Defendants.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Franklin T. Dupree, Jr., District Judge. (C/A 80-757-CIV-5)

Argued July 12, 1984. Decided September 19, 1984

Before PHILLIPS, MURNAGHAN AND ERVIN, Circuit Judges.

Dean A. Shangler, (Loflin and Loflin on brief) for Appellant; Thomas J. Ziko, Assistant Attorney General (Rufus L. Edmisten, Attorney General; Edwin M. Speas, Jr., Special Deputy Attorney General, on brief) for Appellees.

PHILLIPS, Circuit Judge:

Scott Chapman, a student at North Carolina State University (NSCU), [1/] appeals from a judgment of the United States District Court for the Eastern District of North Carolina granting the defendant's motion for summary judgment. The district court held that NCSU's policy prohibiting door-to-door solicitation in its dormitories did not unconstitutionally interfere with the exercise of Chapman's first amendment rights. Finding no error, we affirm the judgment of the district court.

I

The undisputed facts are as follows. Prior to June of 1980 the University Solicitation Policy (the Policy) imposed a total prohibition on door-to-door solicitation in university dormitories. The policy was revised in the spring of 1980 to

establish a narrow exception for some student government office candidates. Under the revised policy, candidates for the student government offices of president, president of the senate, and treasurer were allowed to campaign door-to-door during a two-week period prior to the elections. The revised policy went into effect in June of 1980. This exception was removed from the policy in December of 1980 when a total ban on solicitation was reinstated. Because the student elections for the 1980 academic year were held prior to the effective date of the revised policy excepting student politicians, the challenged exception was never actually implemented.

While a student at NCSU, Chapman was a member of the Church of Christ, a fundamentalist, evangelical Christian church. In the summer of 1980, Chapman, in accordance with the tenets of his faith

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1 North Carolina State University is a constituent institution of the University of North Carolina and is located in Raleigh, North Carolina. N.C.G.S. § 116-4 (1978).

sponsored a series of Bible discussions on the NCSU campus. In order to encourage attendance, Chapman went from door to door in various dormitories informing fellow students of the planned Bible discussions. After receiving complaints from several students, NCSU officials informed Chapman that his activities violated the policy prohibiting door-to-door solicitation by anyone except certain student candidates for campus offices. When Chapman refused to cease solicitation, he was threatened with expulsion and subjected to an action initiated by the NCSU judicial system. Because witnesses produced by the University failed to identify Chapman as one of the solicitors, the charges were dismissed.

Chapman commenced the present action under 42 U.S.C. § 1983 in November of 1980 claiming, in part, that the policy violated his first amendment rights of freedom of speech and religion on the grounds that it granted candidates for student government offices the right to campaign door-to-

door in student dormitories while prohibiting door-to-door solicitation for religious purposes. 2/ The district court granted summary judgment for the defendants. This appeal followed.

II

In Perry Educational Association v. Perry Local Educators' Association, ____ U.S. _____, 103 S.Ct. 948, 954 (1983), the Supreme Court held that "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." In determining the constitutionality of state restrictions on the exercise of first amendment rights on public property, three categories of public property, each

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2 This action was initiated as a class action for damages and permanent injunctive relief against agencies named as defendants and against the two university officials named as defendants in both their official and individual capacities. The damage claim against the university and its officers in their official capacities was dismissed by an interlocutory order which was not appealed. The claim for permanent injunctive relief against any

prohibition of solicitation by appellant was also dismissed by an interlocutory order that was earlier appealed and affirmed in an unpublished opinion of this court. Chapman v. Thomas, et al., No. 82-1634 (4th Cir. June 22, 1983). Because the record was not then clear as to the actual implementation of the short-lived selective policy, the district court declined at that time to dismiss the claim insofar as it related to the selective policy for the period of its duration The court later, however, granted summary judgment for the remaining defendants on that aspect of the claim as well, and it is that order which alone is before us on this appeal. As to it, the claim for injunctive relief is of course now moot, but appellant presses the claim for declaratory and monetary relief.

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subject to a different standard, must be considered. Id. at 954-55.

The first category includes traditional public forums such as streets and parks "which by long tradition or by government fiat have been devoted to assembly and debate...." Id. at 954. The state's power to restrict first amendment activities in public forums is severely limited. All communicative activity may not be prohibited. "For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly

drawn to achieve that end." Id. at 955. Content-neutral time, place, and manner restrictions may be enforced if significant government interests are served, the restrictions are narrowly drawn, and ample alternative channels of communication are provided. Id.

Public property not in the first category that is, however, opened to the public by the state as a forum for expressive activity comprises the second category. Although the state is not constitutionally required to open such facilities to the public, if it chooses to do so, the state then "is bound by the same standards as apply in a traditional public forum." Id.

The third category consists of public property which is neither a traditional nor a designated public forum. These nonpublic forums are governed by different standards. Id. Not only may the state enforce reasonable time, place, and manner restrictions, but "the state may [also] reserve the forum for its intended purposes, communicative or

otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because the public officials oppose the speaker's view." Id. In Perry, the Court held that

> Implicit in the concept of nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity. These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended purpose of the property. The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves. (Footnote omitted.) Id. at 957.
>
> [W]hen government property is not dedicated to open communication the government may - without further justification - restrict use to those who participate in the forum's official business. Id. at 959.

We now turn to the application of these principles to the present case.

III

The public property at issue here, residential areas of dormitories located on the campus

of a state institution of higher learning, which has not by tradition or designation ever constituted a public forum for communicative purposes must be placed in the category of nonpublic forums. 3/ This being so, the standard by which the university's policy between June and December of 1980 banning door-to-door solicitation with a narrow exception for candidates for the three highest student government positions must be evaluated is one of reasonableness. The issue is whether, in light of the purpose which these residential areas serve, the distinction between religious and political solicitation is reasonable and "not an effort to suppress expression merely because [of opposition to] the [religious] speaker's view." Perry, at 955. For the reasons that follow, we conclude that the university's selective solicitation policy was reasonable, and therefore, the appellant's constitutional rights were not violated.

First off, there can be no doubt that the university had a legitimate interest in protecting

students in its residential dormitories from unwanted, indiscriminate door-to-door solicitation by whoever might choose to descend uninvited upon them at whatever time and for whatever purpose. The question goes only to the selectivity of the policy adopted to further this undoutedly legitimate general interest.

Looking to the selectivity feature, and focussing upon the ultimate distinction it made between political and religious solicitation as put in direct issue by plaintiff's challenge, we find the policy a constitutionally reasonable one. It reflected a more particularized legitimate interest of the university in promoting student participation in student government. That interest is real, not fanciful, and goes far beyond mere indulgence in in another voluntary extra-curricular student

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3 The district court, in its June 14, 1982, order, found that the residential areas of dormitories were nonpublic forums. That decision was affirmed by this court in an unpublished opinion, Chapman v. Thomas, et al., No. 82-1634 (June 22, 1983).

activity. Student government by law and custom on this state university campus has an important structural role in the state's administration of this important agency. Student government is a mandatory student organization, the only one that includes every student. The student government organization has legal authority to process student disciplinary actions and to impose sanctions, including a recommendation of expulsion, upon students. Further, the student body president, as a matter of statute, sits on the university board of trustees. See N.C.G.S. § 116-31(d).

To further this legitimate interest in encouraging responsible and effective participation in student government political activity, the challenged exception was narrowly drawn both in terms of those freed up from the general ban on solicitation and in terms of the time period in which it could be invoked. Only those candidates for the three highest positions in student government, president, president of the senate, and treasurer,

were covered by the exception. Door-to-door campaigns by those candidates could be engaged in for only a two-week period prior to the election.

The university's selective solicitation policy did not prohibit all solicitation by appellant within the residence halls. Solicitation in the lobbies and waiting parlors of the dormitories and fraternity houses was permitted by the policy. Upon express invitation, the appellant could also carry on his activities in the individual rooms of students.

We, therefore, conclude that the selective solicitation policy was reasonable and not aimed at suppressing appellant's speech merely because of opposition to his views. The judgment of the district court is therefore affirmed.

AFFIRMED.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

SCOTT CHAPMAN, Plaintiff	)	No. 80-757-CIV-5
vs.	)	O R D E R
JOAB L. THOMAS, et al., Defendants	)	

This action is before the court on objection to the Magistrate's recommendation filed September 20, 1983.

After an independent and thorough review of those portions of the record relating to the Magistrate's memorandum, and all objections thereto, the court concludes that the recommendation is correct and in accordance with law. Accordingly, the Magistrate's recommendation is accepted, defendant's motion for summary judgment is granted, and the action is dismissed.

SO ORDERED.

/s/ F.T. Dupree, Jr.

November 15, 1983. UNITED STATES DISTRICT JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

SCOTT CHAPMAN, Plaintiff,	)	
v.	)	No. 80-757-CIV-5
	)	MEMORANDUM AND RECOMMENDATION
JOAB L. THOMAS, ET AL., Defendants	)	

Plaintiff brought this action seeking injunctive relief to prohibit enforcement of regulations of North Carolina State University (NCBU) which bar door-to-door soliciations in the school's dormitories, and for damages which he contends he sustained because of enforcement of those regulations from June until December, 1980. Previous rulings of this court, affirmed on appeal by the Fourth Circuit, have resulted in dismissal of the institutional defendants and of the individual defendants in their official capacities. In addition, summary judgment has been allowed on the issue of

injunctive relief. This cause is now before the court upon Motion for Summary Judgment filed by the remaining defendants (individual defendants in their individual capacities) on the remaining claim (claim for damages sustained because of enforcement of the reulations).

At issue in this decision is NCSU's regulation, as it was enforced between June and December, 1980 barring door-to-door soliciations in campus dormitories. At that time plaintiff, a religious adherent, sought to proselytize other students by proceeding through dormitories door-to-door, At the time regulations permitted such solicitation door-to-door by candidates for the three highest positions in student government. Subsequently, the regulations were changed so that this exception was deleted, making a total ban on such solicitations. The defendant moves for summary judgment as to the remaining defendants and the remaining claims on the ground that:

1. The defendants' decision to prohibit the

plaintiff from conducting door-to-door soliciations during the summer and fall of 1980 did not violate any of the plaintiff's rights under the First and Fourteenth Amendment, and

2. Even if the solicitation policy as it previously existed did violate plaintiff's First Amendment rights, the defendants' conduct in this case did not violate any of plaintiff's clearly established constitutional rights and, therefore, they should be held immune from liability for civil damages in this case.

Plaintiff contends that summary judgment should be denied because:

1. The previous ruling of this court dening summary judgment for the defendants on this issue constitutes the "law of the base" which cannot now be changed unless the prior ruling was "plainly wrong" or where "application of the law of the case will work manifest injustice." And,

2. In any event, defendants' argument that the June to December 1980 policy was constitutional is untenable.

Plaintiff's "Law of the case" argument is not persuasive. It assumes that a particular issue has been definitively ruled upon by the court and, that being so, the ruling ought not to be changed except to correct a ruling which was "plainly wrong" or where application of the law of the case

will work manifest injustice. Plaintiff contends that the "plainly wrong" standard imposes a presumption of correctness so that the court is no longer at liberty to decide the issue on the merits of the arguments without such a presumption. But this court's order of June 14, 1983 found that there were insufficient facts in the record as it then existed to rule on the merits of the summary judgment motion as it pertained to these issues. Accordingly, the court has not given a full consideration to summary judgment on these issues and is not precluded from doing so now.

As the court previously directed, the record has been substantially expanded as to the practices and policies of door-to-door soliciation from June to December, 1980. Prior to June, 1980 the University's policy imposed a blanket prohibition on door-to-door soliciations in dormitories, with no exceptions. This policy was reviewed in the spring of 1980 at which time it was observed that previously candidates for the top three positions of

the student body government had participated in door-to-door soliciations in violation of policy. Enforcement against those solicitations was not practical because no student had ever complained about it. Furthermore, it appeared to the university administration that the policy should be amended to allow the narrow exception of candidates for student government to solicit door-to-door for the following reasons:

- The student government organization is unique in that is it the only university organization which is mandatory and includes every student in its membership. Student body government has the authority to impose sanctions on students, such as recommending their expulsion. The student body president is the only student leader with a statutory right to sit on the University Board of Trustees.

- Only candidates for the following student body offices every conducted door-to-door campaigns: president, president of the senate, and treasurer.

- Campaigning was strictly limited to a period of about two weeks.

- Threats to dormitory security were minimized by student Election Board nomination process which determined candidates for those positions.

- Pictures of all candidates were placed in the campus newspaper so that all students could recognize the authorized candidates.

- There was no election between June and December of 1980, so the policy exception which existed at that time was not used.

- The attorney who drafted tge policy was concerned with the impact that it might have on students' First Amendment rights and reviewed the law that he thought was applicable prior to making the draft.

This court previously found in its June 14, 1983, order, that the residential areas of the dormitories at NCSU are not public forums. As this court previously observed, the First Amendment permits fewer restrictions of speech in public forums. Most of the cases cited by the parties and considered by the court in this matter heretofore have involved restricted access to public forums. The recent case of Terry Education Association v. Terry Local Educators' Association. ___ U.S. ___, decided February 12, 1983, is a case about permissible access to the inter-office mail facility of a school system, which the Court found to be a non-public forum. In that case the court held:

> Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity. These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended purpose of the property. The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves. (Slip Opinion, page 11). . . . [W]hen government property is not dedicated to open communication the government may - without further justification - restrict use to those who participate in the forum's official business. (Slip Opinion, page 15).

The Court found that a labor union which had been designated as the official bargaining agent of teachers should be allowed access to the school mail facility and that such access did not require giving similar access to a competitive union which had not been designated as the official bargaining representative.

Based upon the authority and logic of Perry Educational Association, the court concludes that the university's door-to-door soliciation policy from June to December, 1980 was reasonable in the

narrow exception accorded candidates for the three positions of the Student Body Government. The exception was narrow, both in terms of persons and time, and justifiable both because of the importance to the university of the positions being elected and because of the protections afforded the students against breach of security. It appears to the undersigned that this narrow exception of the university policy did not require broadening to include plaintiff and others similarly situated who sought to proselytize the thousands of students of all faiths who were present at NCSU for the purpose of obtaining an education.

Accordingly IT IS HEREBY RECOMMENDED that the defendants' Motion for Summary Judgment as to the remaining defendants and the remaining claims in this case be ALLOWED and that this action be dismissed.

This the 20th day of September, 1983.

/s/ Alexander B. Denson

UNITED STATES MAGISTRATE

Appendix D

42 U.S.C. §1983 provides in pertinent part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Appendix E

The North Carolina State University Solicitation Policy provides in pertinent part as follows:

II. Noncommercial Solicitation, Canvassing, Assemblies

A. Residence Halls And Other University Housing

Permission to engage in the following noncommercial solicitation and canvassing activities may be obtained from the Residence Director. These activities may occur only within the lobby or waiting parlor of the residence hall or fraternity, i.e., no door-to-door solicitation. Campus election policies are the responsibility of the Election Board and are not covered by the policy. In addition, nonaffiliated groups must register with the Department of Student Development before they can engage in these activities:

1. Allowing students to be afforded access to the presence and ideologies of candidates who seek election in town, county, state, or national offices.
2. Allowing affiliated groups to participate in solicitations on behalf of charities which comply with the North Carolina "Solicitations of Charitable Funds" Acts.
3. Allowing an affiliated group, acting in a manner consistent with its stated purpose and in fulfillment of its informational or educational goals, to seek to enlarge its membership, disseminate its own published works, to distribute materials supportive of its own point of view, or to solicit support for its causes.
4. Allowing enrolled students to be afforded access to religious views and perspectives.

CERTIFICATE OF SERVICE

I, Thomas Franklin Loflin III, a member of the Bar of the Supreme Court of the United States and counsel of record for Scott Chapman, petitioner herein, hereby certify that on December 18, 1984, pursuant to Rule 28, Rules of the Supreme Court, I served copies of the foregoing Petition for Writ of Certiorari on the opposing party as follows:

On Joab Thomas and Thomas Stafford, Respondents herein, by depositing three copies in the U.S. Post Office in Durham, North Carolina, with first-class postage prepaid, properly addressed to respondents' counsel of record, Edwin M. Speas, Jr., Esq., Special Deputy Attorney General, and Thomas J. Ziko, Esq., N.C. Department of Justice, P.O. Box 629, Raleigh, N.C. 27602.

I further certify that all parties required to be served have been served.

Dated December 18, 1984.

Thomas Franklin Loflin

THOMAS FRANKLIN LOFLIN III
Counsel for the Petitioner

LOFLIN & LOFLIN
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Supreme Court, U.S.
FILED
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JOSEPH L. STEVAS
CLERK

IN THE

Supreme Court of the United States

October Term, 1984

SCOTT CHAPMAN, PETITIONER,

v.

JOAB L. THOMAS AND
THOMAS H. STAFFORD, RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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NO. 84-982

IN THE

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STATEMENT OF THE CASE

Pursuant to Rule 34.2 the respondents join in the petitioner's Statement of the Case, except that portion of same wherein the petitioner alleges that the Solicitation Policy at issue "was interpreted as preventing, and enforced to prevent, Chapman or any NCSU [North Carolina State University] student from personally approaching another student on a one-to-one basis either in the dormitory hallways or in the student's room to invite that student to a discussion of Scripture...." Petition, p. 4-5. There is nothing in the record to indicate that the Solicitation Policy was ever interpreted as preventing or enforced to prevent any activity not specifically

proscribed in the policy. The Solicitation Policy specifically prohibits door-to-door solicitation in the residential portion of the NCSU dormitories. Appendix to Petition, p. 24a. The petitioner was prosecuted in the NCSU student courts for conducting a door-to-door solicitation in one of the residence halls. There is nothing in the record to indicate that the petitioner or any other student was prosecuted for speaking to another student in a dormitory hallway or for speaking to a student in his room, provided the invitation to enter the student's room was not the result of a door-to-door solicitation. Appendix to Petition, p. 12a.

SUMMARY OF ARGUMENT

The court below held that North Carolina State University Solicitation Policy which prohibited all door-to-door solicitations, except door-to-door campaigns conducted by candidates for student government office, did not violate the petitioner's First Amendment right to freedom of speech. The court based its decision on this Court's analysis and holding in *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983). The lower court approriately followed that analysis and holding because the issue presented in this case involved the regulation of First Amendment activities in a nonpublic forum. The petitioner's claim that the circuit court's decision is inconsistent with *Tinker v. Des Moines Community School District,* 393 U.S. 503 (1969), lacks merit because the present case does not involve an attempt to suppress a particular opinion or viewpoint. The petitioner's claim that the court's decision is inconsistent with *Police Department of the City of Chicago v. Mosley,* 408 U.S. 92 (1972), lacks merit because the present case does not

involve the regulation of First Amendment activities on public property which is by tradition or designation a forum for public communication.

REASONS FOR DENYING THE WRIT

I. The decision reached below is consistent with the applicable decisions of this Court regarding state regulation of students' First Amendment activities in public schools and universities.

The issue considered by the court below was whether North Carolina State University's Solicitation Policy which prohibited all door-to-door solicitations in student residence halls, except door-to-door campaigns, by candidates for student government office, violated the petitioner's First Amendment right to freedom of speech. The court held that the policy did not violate any of the petition's First Amendment rights. The court based that decision on this Court's analysis and holding in *Perry Education Assn., v. Perry Local Educators' Association, supra.*

First, the circuit court examined the character of the property at issue to determine whether it was a traditional public forum, a designated public forum or a nonpublic forum. Relying upon the district court's finding and a prior decision in this case, the court held that the residential areas of the dormitories on the NCSU campus were neither by tradition nor designation public forums for communicative purposes. Therefore, the circuit court held that the property at issue fell into the nonpublic forum category. Appendix to Petition, pp. 8a-10a.

Having determined that the case involved the

regulation of expressive activities in a nonpublic forum, the court then went on to determine whether the Solicitation Policy's "distinction between religious and political solicitation is reasonable and 'not an effort to suppress expression merely because (of opposition to) the (religious) speaker's view." *Perry,* (460 U.S. at 46)." Appendix to Petition, p. 9a. At the conclusion of its analysis the court determined that the Solicitation Policy did draw a reasonable distinction between the petitioner's activities and those of student political candidates. The Court also found that the University's enforcement of the Solicitation Policy was not an effort to suppress the petitioner's expression merely because the University was opposed to his views. Therefore, the circuit court affirmed the district court judgment dismissing the petitioner's claims against the respondents. Appendix to Petition, p. 12.a.

The petitioner first complains that the court below should not have analyzed the issue in this case under the reasonableness standard utilized by this Court in *Perry.* The petitioner contends that his claims should have been analyzed in accordance with the material and substantial disruption standard utilized by this Court in *Tinker v. Des Moines Independent Community School District, supra.* This argument ignores the fact that *Tinker* involved an attempt by school officials to suppress a particular expression of opinion simply because they feared that the students' symbolic expression of an unpopular viewpoint might cause a disturbance in the schools. *Id.* at 508-509.

The respondents contend that the analysis and holding in *Tinker* is not applicable to the present case. The University has never attempted to prohibit the expression of one particular opinion, but rather has acted to regulate a certain form of expressive conduct irrespective of the speaker's message. The distinction between those two forms of regulations is significant. In reaching its decision

in *Tinker* this Court specifically noted:

> "It is also relevant that the school authority did not purport to prohibit the wearing of all symbols of political or controversial significance." *Id.* at 510.

Insofar as the University in this case has attempted to regulate a certain kind of expressive conduct rather than suppress a particular viewpoint, the court below properly applied the analysis and holding of *Perry* rather than *Tinker.*

The petitioner also contends that the lower court's analysis is inconsistent with this Court's decision in *Police Department of Chicago v. Mosley, supra.* The decision in *Mosley* dealt with a content based restriction of First Amendment activities on streets and sidewalks, areas which the Court has recognized to be among the "quintessential public forums." *Perry*, at 45. The petition attempts to bring the present case within the scope of the Court's holding in *Mosley* by claiming that the entire University campus is an open forum for purposes of student First Amendment activities. The petitioner's claim that the University is an open forum for all students, however, has no support in any precedent of this Court. In fact, the Court has specifically stated that students do not have an absolute constitutional right of access to all university buildings or grounds. *Widmar v. Vincent,* 454 U.S. 263, 267, fn. 5 (1981); *See also, Grayned v. City of Rockford*, 408 U.S. 104, 117-118 (1972); *Perry Education Assn. v. Perry Local Educators' Assn., supra* at 44 (1983).

Finally, the petitioner contends that it was inappropriate for the Court below to utilize the *Perry* analysis and standard because that decision pertains only to situations where a speaker is *seeking access* to a forum, whereas in this case the petitioner already had access to the student residence halls by virtue of his student status. The petitioner

complains that the decision reached by the court below "is equivalent to the school administration in PERRY permitting the recognized faculty union to use the intra-school mailboxes, *but censoring the content* of the recognized union's printed matter." Petition, p. 19.

This argument overlooks three facts. First, the student status which gave the petitioner his initial access to the student residence halls was itself conditioned on his willingness to abide by the appropriate University regulations, one of which was the Solicitation Policy. Second, the argument overlooks the fact that the issue before the Court in *Perry* was not simply one of access to the forum in question. The Perry Local Educators' Association (PLEA) was simply a group of teachers, each of whom had personal access to the internal mail system of the school district. *Perry*, *supra* at 39. Thus, like the petitioner, the members of PLEA already had acess to the forum in question. The issue before the Court in *Perry* was whether those members could use that access to distribute mail pertaining to the PLEA's positions and activities. Finally, this argument overlooks the fact that the school administrators in *Perry* did not grant the Perry Education Association (PEA) unlimited access to the interschool mailing system. The PEA's access to the mail system was limited to messages which the PEA found necessary to disseminate in its official capacity as representative of the teachers. There was nothing in the record in *Perry* to indicate that the school administrators did not restrict PEA's mailings to messages dealing with official union business. *Perry*, *supra* at 53, fn. 13.

Following the decision in *Perry*, the court below upheld the constitutionality of the University's Solicitation Policy because it pertained to expressive activities in a nonpublic forum, it was reasonable, and it was not an effort to suppress the petitioner's speech merely because school

officials opposed his views. This Court has on more than one occasion stated that university officials have the right to impose reasonable restrictions on First Amendment activities on the campuses of public universities. *Perry Education Assn. v. Perry Local Educators', supra; Widmar v. Vincent, supra; Healy v. James,* 408 U.S. 169, 189 (1972). Thus, the petitioner's claim that the lower court's decision is in conflict with the applicable decisions of this Court is incorrect.

II. The case does not present issues of great public importance.

The petitioner contends that the case presents an issue of great public importance because the decision of the court below permits officials of state supported universities to prohibit all expressions of religious views by dormitory residents. This is not true. The Solicitation Policy at issue permits the petitioner to engage in a wide variety of expressive activities across the entire campus, in the residence hall lobbies, in his dormitory room and in those dormitory rooms to which he is invited. The only activity prohibited under the policy is *door-to-door solicitation* in the residential portion of the dormitories. This slight restriction on the petitioner's expressive activities is more than justified by the University's interest in preserving the security and privacy of students who otherwise live their entire lives in the public classrooms, dining halls, buildings and campus of the University. Furthermore, the petitioner's personal plea for access to the residence halls overlooks the fact that the University cannot reasonably permit him to conduct door-to-door solicitations without honoring the request of every other student to engage in similar behavior. The University has a right to consider the total impact of its policies and need not accommodate the petitioner's

special interest simply because a personal exemption would have a negligible impact on the interest protected by the policy. *Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640, 652-654 (1981).

CONCLUSION

Insofar as the petitioner has failed to show that the court below decided the question at issue in a way in conflict with applicable decisions of the Court and has failed to show any other special or important reason for granting a writ of certiorari in this case, the respondents respecfully request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document has been mailed in the United States Mail, Postage prepaid to:

Thomas F. Loflin III
Box 1315
Durham, North Carolina 27702

This the 6th day of March, 1985.

_____

Edwin M. Speas, Jr.
Special Deputy Attorney General

Office - Supreme Court, U.S.
FILED
MAR 20 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-982

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SCOTT CHAPMAN, PETITIONER

v.

JOAB L. THOMAS AND THOMAS H. STAFFORD

ON PETITION FOR WRIT OF CERTIORARI
TO THE FOURTH CIRCUIT COURT OF APPEALS

PETITIONER'S REPLY

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PETITIONER'S REPLY

Although the reasons which Petitioner believes warrant the grant of the writ sought are adequately stated in the Petition, he believes that a reply is warranted in order to correct several assertions contained in Respondents' Brief in Opposition so that the issues raised by Petitioner are before this Court in sharp focus.

I. The Scope, Interpretation, and Enforcement of the North Carolina State University (NCSU) Solicitation Policy.

In their Brief in Opposition the Respondents take issue with Petitioner's that the Solicitation Policy at issue here "was interpreted as preventing, and enforced to prevent, Chapman or any NCSU student from personally approaching another student on a one-to-one basis either in the dormitory hallways or in the student's room to invite that student to a discussion of Scripture." Brief in Opposition, p. 1. Respondents argue the above factual statement is incorrect in that the policy was never enforced to prevent nor interpreted as preventing any action that is not specifically proscribed by the policy, that the policy specifically prohibits door-to-door solicitation in the dormitory residence areas, and that Petitioner was prosecuted in the student courts simply for conducting door-to-door solicitation in one of the residence halls. Id. at pp. 1-2. Respondents urge

that there is nothing in the record which indicates that Petitioner was prosecuted for speaking to another student in a dormitory hallway or for speaking to a student in his room, so long as any invitation to enter some student's room was not the result of the door-to-door solicitation. Id. However, Respondents here misrepresent the policy's prohibitions and fail to take note of several pertinent items in the record in this case.

As a reading of the pertinent part of the NCSU Solicitation Policy, Petition p. 24a, makes clear, the policy deals with four enumerated categories of noncommercial solicitation and canvassing activities, those relevent to the issues raised by Petitioner being parts II. A. I and IV. Very simply, the ban here at issue is not, as Respondents seem to suggest, an absolute ban on "soliciting" or "canvassing activities" by dormitory residents in their residence halls. Indeed, such a prohibition, which would preclude dormitory residents from going down the halls door-to-door asking friends to accompany

them to basketball games, is in conflict with the university's own Disruption Policy, which appears along with the Solicitation Policy in the Student Handbook. This handbook is adverted to by Larry Gracie in his affidavit of December 2, 1980, which is reproduced in pertinent part in Reply Appendix A. The Handbook explains, "'the university Disruption Policy upholds your 'right of free discussion and expression, peaceful picketing and demonstrations, and the right to petition and to peaceably to assemble.'" NCSU Student Handbook for 1980, p. 42. It is clear from the foregoing that while the university intended to allow students free expression in general, it attempted specifically to prevent students from going through their residence halls expressing either religious ideas or political opinions that did not deal with student politics.

In regard to Respondents' contention that nothing in the record indicates that Petitioner or any other student was prosecuted for speaking to

another student in a hallway of the dorms or in the student's room, the affidavits of Elwood Becton of December 3, 1980, and Petitioner, Scott Chapman, of October 30, 1980, both part of the record in this case and reproduced in pertinent part as Reply Appendix B and Reply Appendix C respectively, are noteworthy. Becton, the Assistant Director of Student Development at NCSU, said that after Petitioner Chapman had at one point discussed his solicitation activities with Becton, telling Becton that Chapman would knock on the door, converse with the resident and invite him to a religious meeting, Becton informed Petitioner that his actions "were exactly the type of conduct the university sought to prohibit." Reply, p. In his uncontradicted affidavit, Chapman said that after his church group began holding discussions and after he "let some of the guys on [his] floor know about the discussions," Jeff Hunter, the Resident Director, told Chapman that he had broken the school's Solicitation Policy. Reply, p.

II. Conflict with Applicable Decisions and Importance of Issues Presented.

A. Applicability of the Holdings in Tinker and Mosley.

Respondents contend that the analysis and holding in Tinker v. Des Moines School District, 393 U.S. 503 (1969), is not applicable to the present case, because the university has never attempted to prohibit the expression of some particular opinion, but rather has acted to regulate a form of expressive conduct irrespective of the speakers message. However, as noted in the Statement of the Case in the Petition, candidates for student government offices were explicitly exempted from the Solicitation Policy's stated prohibitions against noncommercial solicitation. Petition, p. 5. Student politicians could "canvass" door-to-door, students could not, however, "canvass" door-to-door to urge the election of Ronald Reagan as President of the United States without risking expulsion. And religious students could not canvass

other students in precisely the same fashion as student politicians were allowed to do because religious ideas are out of bounds under the policy.

Indeed, the language cited from Tinker by Respondents --

> It is also relevant that the school authority did not purport to prohibit the wearing of all symbols of political or controversial significance. Id. at 510. --

supports Petitioner's position here. NCSU did not prohibit all political or controversial discourse on the part of students door-to-door down dormitory hallways, but it did stop Petitioner from inviting fellow students to discussions of Scripture.

Further, Respondents assert in regard to Petitioner's argument for the relevance of an equal protection analysis in the instant case that the Petition attempts to bring the instant case within the scope of Police Department of Chicago v. Mosley, 408 U.S. 92 (1972), by claiming the entire NCSU campus is an open forum for student First Amendment activities. Respondents find

error in this in that this Court has stated that students do not have an absolute constitutional right of access to all university buildings or grounds. Widmar v. Vincent, 454 U.S. 63 (1981).

The basis of Petitioner's argument, however, is that because Petitioner and student politicians are all students, they are all similarly situated in regard to the forum in question. And insofar as students enjoy First Amendment rights to some extent on college campuses, which Respondents do not dispute, Petitioner's and student politicians' speech rights should be coextensive in scope. If they are not, as they were not at NCSU, then, under the reasoning of Mosley, the curtailment of Petitioner's speech rights must be evaluated under an equal protection analysis. Petitioner then simply stresses the similar situation of Petitioner in regard to other students who were student politicians in making this argument.

B. Importance of Issues Presented.

Respondents argue that the policy in question

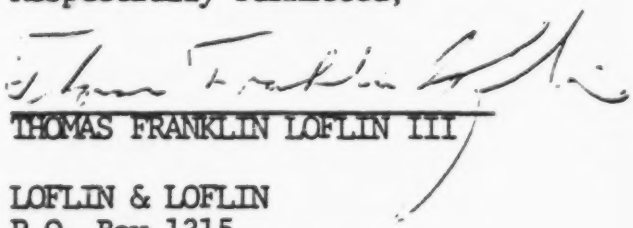
really imposes a slight restriction on Petitioner's expressive activities. However, as noted under Part 1, supra, what is prohibited is particular types of speech, notably religious speech and political speech by other than student politicians. As such, the restriction applies to both types of speech which a plurality of this Court has found to be those most cherished by the framers and which should be most staunchly protected against even slight infringement by the state. Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976). Indeed, under the Solicitation Policy here defended by Respondents, dormitory residents could canvass door-to-door down their dormitory halls inviting fellow students to a basketball game or urging them to come along to see stag films at a fraternity house without risking their university careers, but should the same students' canvassing in the same manner urge other students to vote for Ronald Reagan as President or to come to a discussion of Scripture, they risk severe academic

sanctions. By the opinion below, the law of the Fourth Circuit is presently that state officials crafting university policies have discretion to restrict political and religious speech among adult university students in student housing so long as it is merely a "reasonable" restriction. The opinion below thus presents a very real threat to important and fundamental freedoms.

CONCLUSION

For the foregoing reasons, as well as those which have been urged in the Petition, Certiorari should be granted.

Respectfully submitted,



THOMAS FRANKLIN LOFLIN III

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Attorneys for Petitioner

Reply Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-982

Scott Chapman,

Appellant,

versus

Joab L. Thomas and Thomas H. Stafford,

Appellees.

STATE OF NORTH CAROLINA AFFIDAVIT OF

COUNTY OF WAKE LARRY W. GRACIE

Larry W. Gracie, being sworn now deposes and says:

In my responsibilities as Director of Student Development, I am charged with a series of non-academic policies and their regulations. I served in this capacity during the time the current University Solicitation Policy was reviewed and implemented.

This policy, with other non-academic policies,

is printed for distribution from the Student Development office to any individual interested and is incorporated into University and Student Government documents. Two of the most notable publications in which the "Solicitation Policy" appears is the Student Handbook prepared by Student Development and the Student Body Statutes prepared by Student Government. Both of these documents are made available to all students through Orientation at the beginning of each year then throughout the year at key distribution points....

....

....

This the 2nd day of December, 1980.

/s/ Larry W. Gracie
Director of Student Government

Reply Appendix B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

AFFIDAVIT OF
ELWOOD BECTON

ELWOOD BECTON, being duly sworn now deposes and says:

I am employed by North Carolina State University and hold the position of Assistant Director of Student Development. One of my duties include being the advisor to the University Judicial System.

Response to October 30 Affidavit of Scott Chapman:

During the summer of 1980, the Department of Residence Life received complaints from students that a certain religious group was violating the University Solicitation Policy by going door-to-door solicitation in Turlington Residence Hall. A meeting was called to ascertain whether violations had occurred, to explain the policy to leaders of the group, and to inform the students that disciplinary action could result if violations of the policy, if any, continued. This meeting was

held on June 24, 1980. In attendance were Scott Chapman and Paul Ray, leaders of the religious group, and Dr. Charles Oglesby, Dr. Larry Gracie, Jeff Hunter and myself. After Scott Chapman and Paul Ray detailed their solicitation operation to us, there was no doubt that their activities were prohibited by the policy. They told us that they had a systematic method of soliciting students who lived in residence halls. Basically each member of their group was assigned a number of rooms in which they would be responsible for. The rooms on a particular floor of a residence hall would have a group member contact the residents who lived therein. It did not make any difference whether or not the group member was acquainted with the students who lived in his assigned area. The group member was to knock on the door, make light conversation with the resident(s), and then invite the student(s) to a religious meeting. After this was done, the group member was to proceed to the next door on his list and perform the same routine

until he had covered all of his assigned areas.

We informed Mr. Chapman and Mr. Ray that their actions were exactly the type of conduct the University sought to prohibit....

....

....

....

This the 3rd day of December, 1980.

/s/ Elwood Becton
Student Development

NORTH CAROLINA

WAKE COUNTY

I, Rebecca L. Griffith, a Notary Public, do hereby certify that Elwood Becton personally appeared before me this day, was sworn and affixed his signature to the foregoing affidavit.

Witness my hand and notarial seal, this the 3rd day of December, 1980.

/s/ Rebecca L. Griffith
Notary Public

My Commission Expires:
September 26, 1985

Reply Appendix C

NORTH CAROLINAQ AFFIDAVIT

WAKE COUNTY

I, SCOTT ALLEN CHAPMAN, being duly sworn, depose and say:

I am a sophomore at North Carolina State University majoring in "Engineering Operations". I hope to fly for the United States Air Force and I am currently enrolled in AFROTC. My hometown is Wilmington, Delaware.

I became a Christian on October 7, 1979. As a Christian, it is my conviction to study the word of God, the Bible. I have entrusted my life and my death to the teachings of the Bible. I sincerely believe that anyone who does not obey the teachings of the Bible will not be able to enjoy the best life possible and will also perish in hell eternally, separated from God forever. It is because of these reasons that I want to share my beliefs. This is why I am a member of the Church of Christ.

The Church of Christ obeys the teachings of the Bible and is also actively involved in the spreading of the gospel of Christ. One of the ways that we spread the gospel is to sponsor Biblical discussions in which we invite other people to attend. The discussion is led by a member of the Church of Christ who picks a topic for each discussion. We read some scripture together and then the leader asks questions about the reading and we discuss it.....

The only way to have visitors attend is to let them know about the discussions. While living in a dorm at North Carolina State University, I try to give the opportunity to as many people as I can to attend the discussions. I always introduce myself first and then ask them for their name. After this I immediately state my purpose in coming to their room, I let them know about the discussion and then I ask them if they would be interested in attending. If someone is not interested in coming to the discussion, then I will not bother

or hassle them because of their decision.... If someone is interested, I let them know that they are more than welcome to attend, and I tell them the time and place of the next meeting.

During the summer of 1980, I attended summer school and I lived in Turlington Dormitory at NCSU. I and some other members of the Church of Christ decided to sponsor a biblical discussion in Turlington Dormitory. I asked and received permission from Jeff Hunter (Resident Director) to use the student lounge to hold our weekly discussions in. We began holding the discussions and letting people know about them. I let some of the guys on my floor know about the discussions and many were interested in attending. On June 1, 1980, after two meetings in the lounge, Jeff Hunter told me that we could no longer have the discussion in the lounge because we had broken the school's solicitation policy. We continued to hold the discussions, but they took place in my room, with my roommate's permission. About a week

later, Jeff Hunter wanted to see me again. Paul Ray (the discussion leader) and I went to see Jeff and he told us that we were breaking the solicitation policy when we let people know about the discussions....

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....

/s/ SCOTT ALLEN CHAPMAN

SWORN TO and subscribed before me
this the 30th day of October, 1980.

_____ ILLEGIBLE
NOTARY PUBLIC

My Commission Expires _____ ILLEGIBLE

CERTIFICATE OF SERVICE

I, Thomas Franklin Loflin III, a member of the Bar of the Supreme Court of the United States and counsel of record for Scott Chapman, Petitioner herein, hereby certify that on March 18, 1985, pursuant to Rule 28, Rules of the Supreme Court, I served copies of the foregoing Petitioner's Reply to Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit on the opposing party as follows:

On Joab Thomas and Thomas Stafford, Respondents herein, by depositing three copies in the U.S. Post Office in Durham, N.C., with first-class postage prepaid, properly addressed to Respondents' counsel of record, Edwin M. Speas, Jr., Esq., Special Deputy Attorney General, and Thomas J. Zilo, Esq., Department of Justice, P.O. Box 629, Raleigh, N.C. 27602.

I further certify that all parties required to be served have been served.

Dated March 18, 1985.

THOMAS FRANKLIN LOFLIN III